

RELIEF IN CERTAIN DESERT-LAND ENTRIES.

JULY 7, 1898.—Ordered to be printed.

Mr. HANSBROUGH, from the Committee on Public Lands, submitted the following

REPORT.

[To accompany S. 3429.]

The Committee on Public Lands, to whom was referred the bill (S. 3429) for the relief of persons who made the first payment for desert lands under the act of March 3, 1877, but who were unable to perfect entry thereof, beg leave to submit the following report thereon:

In many of the Western States and Territories there were vast areas of public lands which in their natural condition were arid and unproductive and to which the preemption, homestead, and other existing land laws were so inapplicable that no effort was made to acquire title to them under these laws. It was known that portions of these lands possessed a rich soil, and if subject to artificial irrigation would become highly productive. As an inducement to their reclamation, the act of March 3, 1877 (19 Stat., 377), was passed, whereby it was provided that any citizen of the United States, or person who had declared his intention to become such, could, upon payment of 25 cents per acre, file a declaration under oath with the register and receiver of the local land office announcing his intention to reclaim a stated tract of desert land not exceeding one section, by conducting water upon the same, and that at any time within three years thereafter, upon making satisfactory proof of the reclamation of the tract, and upon the payment of the additional sum of \$1 per acre, the claimant could obtain a patent for the land. This act was by its terms made applicable to "all lands, exclusive of timber lands and mineral lands, which will not, without irrigation, produce some agricultural crop."

In the circular of instructions issued by the General Land Office March 12, 1877, under this act, it was stated that a desert claim properly initiated could be assigned, and that the assignee, upon complying with the terms of the statute, would be entitled to a patent for the land, and the law was thus administered. Some years later, however, it was held by the land department that desert-land claims were not assignable and could only be perfected by the original claimant. The rulings of the land department as to what were desert lands within the meaning of

this act were not uniform, the later rulings excluding from the operation of the act lands coming within the earlier rulings. In localities in the arid States there was an abundance of land with good soil but a scarcity of water, and in the effort, under this statute, to reclaim and make productive and valuable lands which otherwise were altogether unproductive and without value, more land was filed upon than could be reclaimed and irrigated with the available water supply. The result was that those who originally held or who afterwards obtained the prior water rights were able to perfect their desert claims, and others were unable to perfect them. In some instances the project for conducting water to the land from remote places proved more difficult and expensive than at first contemplated and had to be abandoned. In given localities the presence of alkali or of too much sand in the soil prevented successful reclamation and cultivation, necessitating abandonment of the claims. In all cases, however, the claimant was required to make, and did make, the first payment of 25 cents per acre; and in those cases where the claim was not perfected the Government still holds the first payment of 25 cents per acre, notwithstanding it still retains the land and the desert-land claim has long since terminated. In other words, the Government retains the land in its original state and also has the advance payment made at the time of filing.

Your committee believe that in all cases where the desert-land claimant has failed to obtain title to the land, from whatever cause it may have happened, the partial payment made should be returned and repaid to him, his heirs, or assigns. The Government itself has lost nothing, and it is believed that it can not in equity and justice retain this money.

To avoid any question as to the intent of the bill, your committee recommend that the first section be amended by adding thereto the words "but an assignment of the desert-land claim or an error on the part of the original claimant in filing upon land not subject to desert entry shall not defeat such repayment." While this amendment may not be necessary, it will make the meaning of the bill clear, and we feel satisfied that, considering the conflicting rulings of the land department, the assignment of a desert-land claim or the erroneous filing upon land not subject to desert entry ought not to preclude repayment.

March 3, 1891, the desert-land act was so changed and reenacted that there is no occasion to extend the provisions of this bill to filings made after that time, and hence the limitation in the bill in this respect is right.

With the amendment herein suggested, your committee respectfully recommend that the bill do pass.